

1 Philip H. Stillman, Esq. SBN# 152861
2 STILLMAN & ASSOCIATES
3 3015 North Bay Road, Suite B
4 Miami Beach, Florida 33140
5 Tel. and Fax: (888) 235-4279
6 pstillman@stillmanassociates.com

Attorneys for defendant SAN CARLOS INN, L.P.

6 **UNITED STATES DISTRICT COURT FOR THE**
7 **NORTHERN DISTRICT OF CALIFORNIA**

8 Case No. 19-cv-00061-SK

9 SCOTT JOHNSON,

Plaintiff,

v.

11 SAN CARLOS INN, a California
12 Limited Partnership; and Does 1-10,
Defendants.,

Defendant.

ANSWER TO COMPLAINT

Defendant SAN CARLOS INN, L.P. hereby answers the complaint as follows:

1. Defendant lack sufficient information and belief to admit or deny and therefore deny same.

2. Admitted.

3. Admitted

4. Admitted

5. Admitted

6. Admitted

7. Admitted

8. Admitted

9. Admitted.

10. Defendant lacks sufficient information and belief to admit or deny and therefore deny same.

11. Admitted that the Complaint purports to state a claim pursuant to the Americans with Disabilities Act of 1990.

12. Admitted that the Complaint purports to state a claim pursuant to the Unruh Act.

13. Admitted that venue is proper in this District and denies the remainder.

14. Denied.

15. Admitted.

16. Admitted.

17. Defendant lacks sufficient information and belief to admit or deny and therefore denies same.

18. Defendant lacks sufficient information and belief to admit or deny and therefore denies same.

19. Denied.

20. Denied.

21. Denied.

22. Admitted that parking spaces are available for motel guests.

23. Denied.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

29. Denied.

30. Denied

31. Denied.

32. Denied.

33. Denied.

34. Denied.

35. Defendant lacks sufficient information and belief to admit or deny and therefore denies same.

36. Denied.

37. Denied.

38. This is not an allegation that requires a response.

39. This is not an allegation but is a legal conclusion that requires no response.

40. Denied.

41. Denied.

42. This is not an allegation but is a legal conclusion that requires no response.

43. Denied.

44. This is not an allegation but is a legal conclusion that requires no response.

45. Denied.

46. This is not an allegation but is a legal conclusion that requires no response.

47. Denied.

48. Denied.

49. This is not an allegation but is a legal conclusion that requires no response.

50. Denied.

51. This is not an allegation but is a legal conclusion that requires no response.

52. This is not an allegation but is a legal conclusion that requires no response.

53. Denied

54. Denied.

55. Denied.

FIRST AFFIRMATIVE DEFENSE

Defendant alleges that the Complaint and each cause of action therein, fails to state facts sufficient to constitute a cause of action under any theory against these answering Defendant.

SECOND AFFIRMATIVE DEFENSE

Defendant alleges that Plaintiff lacks standing to bring this action.

THIRD AFFIRMATIVE DEFENSE

Defendant alleges that other parties and other persons acted negligently or in some other tortious manner, and that their negligence or other tortious conduct caused the injuries or damages alleged in the Complaint, if any.

FOURTH AFFIRMATIVE DEFENSE

Defendant alleges that it cannot be held responsible for the acts of others or events beyond defendant's control, which acts or events contributed in whole or in part to the damages, claims, and causes of action alleged in the Complaint.

FIFTH AFFIRMATIVE DEFENSE

Defendant alleges that Plaintiff failed to exercise reasonable care and diligence to mitigate the alleged damages, if any.

SIXTH AFFIRMATIVE DEFENSE

Defendant alleges that, should Plaintiff recover damages from this answering defendant, this answering defendant is entitled to indemnification, either in whole or in part, from all persons or entities whose negligence and/or fault proximately contributed to

1 Plaintiff's alleged damages, including Plaintiff; if any there are.

2 **SEVENTH AFFIRMATIVE DEFENSE**

3 Plaintiff failed to attempt to rent accommodations from this Defendant and is
4 therefore barred from seeking damages from this Defendant.

5 **EIGHTH AFFIRMATIVE DEFENSE**

6 Defendant alleges that Plaintiff is barred from pursuing any remedy by the doctrine
7 of unclean hands.

8 **NINTH AFFIRMATIVE DEFENSE**

9 Defendant alleges that all of its conduct and activities as alleged in the Complaint
10 conformed to all laws, statutes, government regulations, and industry standards based upon
11 the state of knowledge existing at all relevant times.

12 **TENTH AFFIRMATIVE DEFENSE**

13 Defendant alleges that Plaintiff has not suffered any damages as a result of any acts
14 or omissions of Defendant.

15 **ELEVENTH AFFIRMATIVE DEFENSE**

16 Defendant alleges that its business establishment is not subject to the requirements of
17 the ADA and/or the Unruh Act as pled and identified in this Complaint.

18 **TWELFTH AFFIRMATIVE DEFENSE**

19 Defendant alleges that its business establishment is subject to one of the exemptions
20 permitted under the ADA and/or the Unruh Act.

21 **THIRTEENTH AFFIRMATIVE DEFENSE**

22 Defendant alleges that it has taken all reasonable steps required to accommodate any
23 actually existing disabilities Plaintiff might have, and any other steps required would be
24 unreasonable and not readily achievable.

25 **FOURTEENTH AFFIRMATIVE DEFENSE**

26 Defendant alleges that all regulations regarding website access have been withdrawn,
27 so that Defendant cannot and could not know what standards applied to website access
28 reservations.

FIFTEENTH AFFIRMATIVE DEFENSE

Defendant alleges that Plaintiff is demanding that Defendant take action that is not readily achievable for Defendant.

SIXTEENTH AFFIRMATIVE DEFENSE

Defendant alleges that Plaintiff failed to reasonably mitigate damages.

EIGHTEENTH AFFIRMATIVE DEFENSE

Defendant alleges that its website is not a place of public accommodation and does not and did not impede Plaintiff's access to a physical place of public accommodation.

NINETEENTH AFFIRMATIVE DEFENSE

As an affirmative defense, Defendant at all times relevant to Plaintiff's claims, acted in conformity with applicable law, regulation, and policy.

TWENTIETH AFFIRMATIVE DEFENSE

As an affirmative defense, Defendant asserts that with respect to all claims under the California Unruh Act, Plaintiff has failed to comply with California Code of Civ. Proc. § 425.50 when such compliance is required in order to maintain an action under § 55.52 of the California Civil Code.

TWENTY-FIRST AFFIRMATIVE DEFENSE

As an affirmative defense, Defendant asserts that with respect to all claims under the California Unruh Act, Plaintiff under California Code of Civ. Proc. § 425.55 is a "high frequency litigant," and Plaintiff has failed to comply as is required in order to maintain an action under § 55.52 of the California Civil Code.

Defendant presently has insufficient knowledge or information on which to form a belief as to whether it may have additional, as yet unstated, defenses available. Defendant herein reserves the right to assert additional defenses in the event discovery indicates that they would be appropriate.

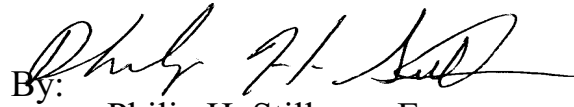
WHEREFORE, Defendants request that Plaintiff take nothing by way of his Complaint, and judgment of dismissal be entered in favor of Defendants, together with

1 costs, attorney's fees and such other and further relief as this Court deems just and
2 appropriate.

3 Respectfully Submitted,

4 STILLMAN & ASSOCIATES

5
6 Dated: April 10, 2019

By: 

7 Philip H. Stillman, Esq.
8 Attorneys for defendant SAN CARLOS INN, L.P.
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I, the undersigned, certify under penalty of perjury that on April 10, 2019 or as soon as possible thereafter, copies of the foregoing Answer was served electronically by the Court's ECF notice to all persons/entities requesting special notice or otherwise entitled to the same.

By: /s/ Philip H. Stillman

Attorneys for defendant